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HONOURABLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO:18077 of 2006

DATED:10-12-2007

Between:

Syed Haz Dwacra Group, rep.by its Group Leader Aktar Unisa

..... PETITIONER

AND

1. The Revenue Divisional Officer (Bandar), Machilipatnam, Krishna District and another

.....RESPONDENTS

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ORDER:

This Court issued Rule Nisi on 30-08-2006 and granted interim direction in W.P.M.P.No.22686 of 2006. Respondents filed W.V.M.P.No.83 of 2007 to vacate the aforesaid interim direction.

2. At the request of the learned counsel on record the matter is being disposed of finally.

3. Sri Kowturu Vinaya Kumar, learned counsel representing the writ petitioner would maintain that the proceeding dated 05-08-2004 placed before this Court was not within the knowledge of

the writ petitioner. In the light of the specific stand taken in the counter-affidavit that another person already had been appointed, the writ petitioner may be permitted to pursue the remedies available in accordance with law. Learned counsel also had taken this Court through the respective stands taken in the affidavit filed in support of the writ petition and also the counter-affidavit filed by the respondents.

4. On the contrary, the learned A.G.P. for Civil Supplies had taken this Court through the contents of the counter-affidavit and would submit that at present the writ petitioner cannot be permitted even to file an appeal as against the said order of making the appointment in the light of the fact that the same is barred by limitation. Even otherwise, in the facts and circumstances of the case, the writ petitioner is not entitled to any of the reliefs which had been prayed for.

5 . Heard the learned counsel and perused the respective affidavit filed in support of the writ petition and also the counter-affidavit and the material papers placed before this Court.

6. The writ petition is filed for a writ of mandamus declaring the actions of the first respondent of taking steps to appoint third party as F.P.Shop dealer in the place of the petitioner Dwacra Group without considering and disposing of the proposals sent by the

second respondent dated 11-03-2004 for appointment of petitioner as the F.P.shop dealer on permanent basis by issuing authorization as illegal, arbitrary, discriminatory and violative of principles of natural justice and consequently direct the first respondent to issue authorization to the petitioner in respect of F.P. Shop No.30, Chinapandraka village, Kruthivennu (M), Krishna District.

7. It is averred that the deponent of the affidavit filed in support of the writ petition is a Group Leader of the petitioner Dwacra Group namely Syed Haz Dwacra Group at Chinapandraka (V), Kruthivennu (M), Krishna District. It is submitted that the first respondent had issued an order dated 24-05-1999 appointing the petitioner as F.P.shop dealer on temporary basis. It is submitted that since then it had been distributing essential commodities to the cardholders and all the 11 members of the group were dependents only on the said F.P.Shop.

8. Further, it is stated that at the first instance the appointment was on temporary basis but in view of the policy of the Government to encourage women to gain self-confidence and for their livelihood, the F.P.shops were entrusted to a number of groups in the district. It is submitted that the second respondent MRO has addressed a letter to respondent No.1 on 11-03-2004 requesting the first respondent to issue authorization to them. It is submitted that as per the instructions of the second respondent they had paid a

sum of Rs.250/- for issue of authorization vide chalana No.1965 dated 09-03-2004. It is submitted that mentioning all these facts the second respondent has recommended their claims to the first respondent for issue of authorization. It is submitted that no action had been taken and no orders had been passed in the said proceedings by the first respondent.

9. It is also stated that they were under the impression that the first respondent will issue authorization to them. It is stated that in fact a notification was issued by the first respondent on 14-06-2004 to fill-up the F.P.shop dealership on permanent basis, but the same was deferred, since their issues were pending for issue of authorization on permanent basis. It is submitted that even after 14-06-2004 the second respondent recommended their case for issue of authorization. It is further submitted that to their surprise they came to know that the first respondent had conducted interview on 22-08-2006 for the said F.P.shop. It is submitted that in fact pursuant to the notification dated 14-06-2004 they had applied for the said shop, but no call letter had been issued to them. It is submitted that when Dwacra Group was conducting FP shop there arises no necessity to conduct fresh interviews. Further, as stated supra, their application is pending for issue of authorization as recommended by the second respondent. Further, it is submitted that the first respondent is well aware about the recommendation of the second respondent and also payment of

fees by them for issue of authorization etc. As such, when there is no vacancy, the question of conducting interviews is unjust. Further, the earlier notification is dated
14-06-2004 and its implementation after the expiry of two years is illegal and improper. Further, the Dwacra group is entitled for preferential treatment, as such, the impugned action of the respondent in taking steps to appoint another candidate in the place of Dwacra group is illegal, arbitrary and violative of principles of natural justice. Further, as stated supra, their applications are pending before the first respondent and without considering the proposals and without disposing of their applications, the respondents are trying to appoint fresh candidate, which will effect their livelihood. Further, non-issuance of call letter to them for interview is also *ex facie* illegal and discriminatory. It is submitted that even the first respondent had accorded permission to them to sell Gruhamithra items in his order dated 24-07-2002.

10. Further, it is stated that the respondents may finalize the selection and issue authorization at any time and in such circumstances, the petitioner left with no other option approached this Court.

11. In the counter-affidavit filed it is stated that the Government of Andhra Pradesh had issued certain guidelines in G.O.Ms.No.198, dated 05-02-1996 Consumer affairs, Food and Civil

Supplies (C.S-1) Department, G.O.Ms.No.53, dated 06-10-2003 for notifying and appointment of F.P.shop dealers permanently. According to the above orders and in pursuance of instructions issued by the Joint Collector, Krishna, in his D.Dis.A6/371/04, dated 24-03-2004, a notification had been issued in this office Rc.K.3177/02, dated 14-06-2004 duly following the rule of reservation, age, qualification, last date for filing applications and interview etc., for filing up of 58 vacancies available as on date in Bandar Revenue Division. Out of the 58 vacancies, 5 vacancies relates to Kruthivennu Mandal including the F.P.shop in question which is being reserved for O.C. category and is being temporarily run by the petitioner's husband who is a benami to Syed Haz Dwacra Group.

12. In pursuance to the notification issued, as mentioned supra, the following applications have been received from the aspirants for appointing them as F.P.shop dealer, Chinapandraka as noted below:

	Date of Birth	
1. Shajeeda Begum, D/o.Shaik Nissar Ahamad	15-3-86	SSC
2. Shaik Jameerahmmad, S/o.Sk.Ahmad	15-5-81	BSC
3. Puli Ravi Kumar, S/o.Rattaiah	2-8-79	B.Com
4. Shaik Sayyed Ahmad, S/o.Sk.Ahmad	6-3-62	

SSC

5. Aktarunnisa, W/o.Sk.Sayyed Ahmad 1-6-72 9th Class

13. After following the procedure laid down and duly conducting walk in interview on 22-8-2006, Sri Puli Ravi Kumar, S/o.Rattaiah, a fully qualified person to hold the post of F.P.Shop dealer was selected and issued appointment orders on 26-08-2006.

14. Aggrieved by the orders issued in this office Rc.C.1141/06, dated 26-08-2006, the present petitioner filed a writ petition before this Court questioning the authority of the Revenue Divisional Officer (appointing authority) as to without disposing and considering the proposal sent by the Mandal Revenue Officer on 11-03-2004 in their favour for appointment of the petitioner as the F.P. shop Dealer on permanent basis by issuing authorization.

15. Further, it is stated that the contention of the petitioner that Dwacra Group was appointed as F.P.shop dealer on temporary basis is true. It is submitted that the appointment was made in favour of the Dwacra group temporarily when the F.P. shop fell vacant due to the election of original dealer (Sri Shaik Sayyed Ahamad) as M.P.T.C. member. No authorization had been issued in favour of the said group.

16. It is also averred that the contention of the petitioner that

an amount of Rs.250/- was remitted by the petitioner's group towards issue of authorization vide challan No.1965, dated 09-03-2004 is true and no orders were issued in their favour by the respondent Revenue Divisional Officer till date.

17. In this connection, it is submitted that the authorization is to be issued to the dealers who were appointed as permanent basis only. It is also further submitted that as per the provisions laid down in Sub-Rule II Rule 6 of the A.P.S.P.D. Control Order System 2001, fee payable for issue of authorization is Rs.500/- by the dealers who are appointed permanently and the fee for renewal of authorization is Rs.250/-. In this particular case, the said petitioner against the rules had paid Rs.250/- and requested for authorization. As such, the request for issue of authorization was not according to the existing rules and hence the request of the petitioners was refused and the entire record sent to the Revenue Divisional Officer was returned to the Mandal Revenue Officer, Kruthivennu, duly intimating the facts in this office L.Dis.1052/04, dated 5-5-2004 (Copy enclosed). Hence, the contention of the petitioner that no action had been taken on their application for authorization was not correct.

18. Further, it is averred that a notification was issued in this Office Rc.K.3177/02, dated 14-06-2004 calling for applications from eligible persons for filling up of 58 vacancies in Bandar Divisions

taking Division as a unit. In reply to this notification, Aktarunnisa, W/o.Shaik Sayyad Ahamad applied for F.P. Shop dealership of Chinapandraka in her individual capacity and not on behalf of "Sayyad Haz Dwacra Group". As stated by her in their petition, that the notification was stayed by the High Court of Andhra Pradesh in W.P.M.P.No.13376/2004 in W.P.No.10544/2004, dated 24-06-2004 and the High Court later was pleased to issue interim orders vacating the stay in W.V.M.P.No.3254 of 2005, dated 21-04-2006. In pursuance of the orders of the High Court, interviews were conducted on 22-8-2006 for which the petitioner was also one of the candidates. In the interview conducted, the petitioner in her individual capacity was disqualified.

19. It is also submitted that the petitioner's request for issue of authorization in favour of the Dwacra group on the plea that the group is distributing the Essential Commodities as on today is not in accordance with the existing rules in force as the temporary appointment made due to the resignation of the permanent F.P. shop dealer in the interest of the card holders stood cancelled on issuance of notification for filling up the F.P. shop vacancies on permanent basis. The Dwacra group should have filed their application before the appointing authority in the name and style of the said Dwacra group enclosing necessary documents pertaining to the Dwacra group viz., resolution of the group, their financial capacity, member particulars etc., which requirement was not

fulfilled in their particular case. The petitioner is trying to mislead the Court by misrepresenting the facts, when her application (not on behalf of Dwacra group) for F.P. shop dealership was disqualified for not having the prescribed minimum general education qualification i.e., SSC etc., the individual had taken the Dwacra group as shelter. Hence, preferential treatment for Dwacra group does not arise here, as no application was filed in favour of the Dwacra Group in question.

20. Certain further averments were made in paras 5, 6 and 7 of the counter-affidavit as well.

21. The proceeding dated 05-08-2004 had been placed before this Court in L.Admn.1052/04 and the translated portion of the proceeding reads as hereunder:

"Office of the Revenue Divisional Office,
Bandar, dated:05-08-2004

L.Admn.1052/04
Sri J.Radhakrishna Murthy,
Revenue Divisional Officer,
Bandar.

Mandal Revenue Officer,
Kruttivennu.

Sir,

Sub:- Civil Supplies – Kruttivennu Mandal – submission of proposals for issuing authorizations to the DWACRA groups who are conducting Fair Price Shops in Sitanapalli and Chinapandraka villages, hamlet of Kruttivennu – Refusing the proposals – Regarding.

Ref:- Proceedings of Mandal Revenue Officer, Kruttivennu in L.Ad.116/2004, dt.06-04-2004, R.C.B.96/04, dt.11-03-04, R.C.B.97/04, dt.11-03-04.

* * *

The proposals sent by you along with the letter in above reference cited are not acceptable for the following reasons:

1. The renewal fees of Rs.250/- will be applicable for the fair price shop dealers who are having acceptable authorizations. Without there being any authorization, making payment of Rs.250/- will not be valid. It is waste.

2. The notification issued for filling up the vacancies and to appoint the dealers on permanent basis with regard to which you have sent proposals now for the three vacancies, is still pending. Hence, it will not be possible to take action separately in this regard.

In view of the above mentioned reasons, the entire record which has been sent by you with regard to the proposals for appointment of three fair price shops, has been rejected and returned.

Yours faithfully,

Encl:-
As above.

Sd/-J.Radhakrishna Murthy,
Revenue Divisional Officer,
Bandar.

//true copy//
Sd/-xxx
Divisional Admn.Officer."

22. In the light of the respective stands taken by the parties, this Court is of the considered opinion that the writ petitioner is not entitled to any of the reliefs prayed for as such. However, liberty is given to the writ petitioner to make appropriate representation in relation to the proceeding dated 05-08-2004, referred to supra, and the petitioner also is at liberty to invoke the appellate remedy in the light of the specific stand taken relating to appointment already made in para 1 of the counter-affidavit. Let the petitioner prefer an appeal questioning the same within a period of thirty days from

today, in the light of the respective stands taken by the parties, if the writ petitioner is so advised. Except giving the aforesaid liberty no positive directions as such can be granted in the writ petition.

23. Subject to the above observations, the writ petition is hereby dismissed. No order as to costs.

10th December, 2007

SKM